RE LIM CHOOI SANG, EX P SOON FAY SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
STEVE LK SHIM J
[BANKRUPTCY NO: D5-29-1665-1997]
16 OCTOBER 1998

BANKRUPTCY: *Petition - Petition presented by director of corporation - Validity - Whether director had legal authority to present petition - Whether seal of corporation was required - Whether board resolution granting authorisation was sufficient - Whether seal of corporation must be affixed to authorisation - Rule 215 of Bankruptcy Rules 1969, s. 133 of Bankruptcy Act 1967*

BANKRUPTCY: *Petition - Petition presented by director of corporation - Validity - Whether signed by director - Whether affidavit in support of petition affirmed by director*

The judgment debtor ('JD') appealed against the decision of the senior assistant registrar who had dismissed his application to set aside the receiving order and adjudication order taken by the judgment creditor ('JC'), a corporation, against him.

The JD submitted that the director ('director') of the JC who had presented the creditor's petition on its behalf, was not authorised to do so. Further, the JD questioned the authenticity of the affidavit deposed by the director in support of the said petition.

Held:

[1] Rule 215 has to be read with s. 133 of the Bankruptcy Act 1967. The second limb in r. 215 read together with s. 133, clearly shows that any officer presenting a creditor's petition on behalf of a corporation has to be duly authorised under seal. In the case of a corporation presenting a creditor's petition by an officer authorised in that behalf, there is no necessity for a board resolution granting the authorisation to be under seal provided that the seal of the corporation is affixed to the authorisation.

[1a] The JC had not shown that the director had been authorised under seal to present the creditor's petition on its behalf. Neither the creditor's petition nor the affidavit in support deposed by the director gave any indication that there was an authorisation under seal.

[2] The JC had not been able to establish in any satisfactory manner that the creditor's petition was actually signed by the director or that the affidavit in support was affirmed by him. As such, it could not be said with any reasonable certainty that the creditor's petition was in fact presented by the director on behalf of the JC and/or that the said affidavit was deposed by the director at the material time.

[Appeal allowed with costs.]

Cases referred to:

Re Mat Shah bin Safuan; exp United Asian Bank Bhd [1991] 1 MLJ 48 ***(dist)***

Re Midgley [1913] 68 LT 45 ***(refd)***

Re Yong Tet Yin; ex parte United Overseas Bank Ltd [1996] 1 BLJ 158 ***(dist)***

Samuel Pakianathan a/l Jabamanickam, Re Ex parte Perwira Habib Bank Malaysia Bhd [1996] 2 AMR 2055 ***(refd)***

Legislation referred to:

Bankruptcy Act 1967, s. 133, (a)

Bankruptcy Rules 1969, r. 215

For the appellant - Saranjit Singh (Devinder Singh with him); M/s Isherafer Ali Devinder & Assoc

For the respondent - Jeffrey Wong (Rajesh Jethi with him); M/s Raja, Darryl & Loh

Reported by Usha Thiagarajah

JUDGMENT

Steve LK Shim J:

This is an appeal by the judgment debtor (JD) against the decision of the learned SAR given on 25 July 1998 dismissing with cost his application to set aside the receiving order and adjudication order dated 21 April 1998 granted pursuant to a creditor's petition taken out by the judgment creditor (JC) against the JD. The application of the JD in encl. 18 is in effect an application to rescind and annul the said receiving order and the adjudication order.

The main thrust of his application is contained in paras 4 and 5 of his affidavit in encl. 17 which state:

> 4. Saya dinasihati oleh peguamcara saya bahawa perintah-perintah tersebut adalah cacat dan defektif oleh kerana En. Chong Che Chong (No. K/P: 530216-10-5679) tidak mempunyai autoriti yang sah dibawah Undang-Undang untuk mempetisyen Mahkamah yang mulia ini untuk membuat satu Perintah Penerimaan dan Perintah Penghukuman terhadap saya.

5. Justeru, autoriti yang kononnya dipunyai En. Chong Che Chong adalah mencurigakan dan tidak boleh dijadikan asas untuk memfailkan Petisyen Pemiutang.

Quite obviously, the averments contain a concentrated attack on the authority of Encik Chong Che Chong in presenting the creditor's petition. It is contended that he had no legal authority to present the said creditor's petition on behalf of the JC (a corporation) and as such, the receiving order and adjudication order granted by the learned SAR are null and void. The judgment creditor (JC) contends otherwise.

In my view, the central issue in dispute relates to the construction to be placed on s. 133(a) of the Bankruptcy Act 1967 and r. 215 of the Bankruptcy Rules 1969 upon the facts of the present case. Section 133(a) stipulates:

> For all or any of the purposes of this Act –
>
> (a) a corporation may act by any of its officers in that behalf under the seal of the corporation.

And r. 215 states:

> Where a corporation presents a petition or takes any other action under this Act, the officer of the corporation may act in his name, stating that he is such officer duly authorised made seal; but a petition may be presented by the corporation and signed by the officer on its behalf. Any person chosen by the corporation to act for it as agent, is an 'officer' within s. 133, and if duly authorised under seal can act for the corporation.

Counsel for the JC has submitted that r. 215 comprises of three limbs and that in respect of the second limb which states that a petition may be presented by a corporation and signed by an officer on its behalf, there are authorities to support the contention that there is no necessity to have any authorisation under seal. He cites two cases, namely, *Re Yong Tet Yin; ex parte United Overseas Bank Ltd* [1996] 1 BLJ 158; [1995] 4 MLJ 582 and *Re Mat Shah bin Safuan; exp United Asian Bank Bhd* [1991] 1 MLJ 48.

It is contended that the present case comes within the ambit of the second limb in r. 215 and that there is sufficient authorisation given to one Encik Chong Che Chong, a director, to present the creditor's petition on behalf of the JC (a corporation). Reference is made to the corporation's board resolution exhibited as "CCC-1" in encl. 21, the relevant part of which states:

> That the director of the company Mr. Chong Che Chong be and is hereby authorised to act and to sign for and on behalf of the company for all or any of the purposes in respect of legal proceedings taken by the company.

The said resolution was apparently signed by the board of directors of the JC including Encik Chong Che Chong. Reliance is also placed on the affidavit of truth of statement filed in support of the creditor's petition wherein Encik Chong Che Chong had deposed that he was a director of the JC and was duly authorised to make the affidavit and to present the said creditor's petition.

As I have said, the JD has taken a different position. Counsel for the JD has raised two grounds. First, he submits that the creditor's petition presented by Encik Chong Che Chong as agent and on behalf of the JC was not authorised under the seal of the JC, a corporation. There is nothing in the creditor's petition or in the affidavit of truth of statement, to indicate clearly that there was an authorisation under seal given by the JC. Here, he relies on the case of *Samuel Pakianathan a/l Jabamanickam, Re Ex parte Perwira Habib Bank Malaysia Bhd* [1996] 2 AMR 2055, where it was held that in the instances arising from r. 215, whether the creditor's petition was presented in its name or in the name of an officer on its behalf, the officer concerned must be duly authorised under seal and s. 133 had the effect of over-riding any ambiguity that might arise under r. 215. In that case, it was found that the words "under seal" were missing in the creditor's petition and there was no evidence presented to the court that the relevant officers had been authorised under seal. On that basis, amongst others, the court allowed the appeal against the decision of the learned SAR in dismissing the appellant's application to set aside the creditor's petition with costs. This appears to be similar to the position in the instant case. Hence, counsel for the JD has submitted that the creditor's petition presented by Encik Chong Che Chong on behalf of the JC, not being authorised under seal, is invalid and a nullity.

Counsel for the JC has, as I have said, responded by citing the two cases, namely, *Re Yong Tet Yin* and *Re Mat Shah bin Safuan (supra)*. It is significant to note at the outset that the facts in those cases are quite different from our case. In both those cases, the officer alleged to have presented the creditor's petition on behalf of the JC (a corporation) was a manager who was also conferred a power of attorney to act on all matters arising out of the bankruptcy of any person indebted to the JC. In the instant case, Encik Chong Che Chong who was authorised to present the creditor's petition on behalf of the JC was merely a director thereof and nothing more. Quite clearly, therefore the cases cited by counsel for the JC are distinguishable on facts with the case before us. In the circumstances, they cannot be of much assistance.

In any event, I am more inclined to accept the construction adopted by the court in *Re Samuel Pakianathan (supra)*. In my view, r. 215 has to be read with s. 133 of the Bankruptcy Act. Reading the second limb in r. 215 with

s. 133, it would seem clear that any officer presenting a creditor's petition on behalf of a corporation has to be duly authorised under seal. In the case of a corporation presenting a creditor's petition by an officer authorised in that behalf, there is no necessity for a board resolution granting the authorisation to be under seal provided that the seal of the corporation is affixed to the authorisation: See *Re Midgley* [1913] 68 LT 45.

Having regard to the views I take, I am bound to hold that the JC has not shown that Encik Chong Che Chong who presented the creditor's petition on behalf of the JC, a corporation, had been duly authorised under seal to do so at the material time. Neither the creditor's petition nor the affidavit of truth of statement deposed by Encik Chong Che Chong give any indication that there was an authorisation under seal. In the circumstances, and for the reasons stated, I find there is substance in the first ground advanced by the JD.

The second ground canvassed by counsel for the JD appears to have emerged unexpectedly in the course of his submission. This relates to the authenticity of the affidavit of truth of statement deposed by Encik Chong Che Chong in support of the creditor's petition filed by him on behalf of the JC. Counsel has cast doubt as to whether the said affidavit was actually deposed or affirmed by Encik Chong Che Chong in view of the signature therein which differs substantially from his signatures made in the other documents such as the affidavit in reply allegedly affirmed by him on 5 June 1998 (encl. 21) as well as the board resolution exh. "CCC-1". When one compares those signatures, the differences are obvious even to a non hand-writing expert. The signatures in the creditor's petition and the affidavit of truth of statement are obviously different from the signature in the affidavit-in-reply. All these signatures are purportedly made by Encik Chong Che Chong, a director of the JC. Counsel for the JC has said that there should be a logical explanation for this but he offers no explanation whatsoever. It seems that he has been caught by surprise. Be that as it may, the position is that the JC has not been able to establish in any satisfactory manner that the creditor's petition was actually signed by Encik Chong Che Chong or that the affidavit of truth of statement filed in support thereof was affirmed by him. In the circumstances, it cannot be said with any reasonable certainty that the said creditor's petition was in fact presented by Encik Chong Che Chong on behalf of the JC and/or that the affidavit of truth of statement was deposed by him at the material time. This doubt must therefore militate against the stand taken by the JC.

For the reasons given, I hold that there is merit in the JD's application in encl. 18. In the circumstances, I will allow the appeal with cost to be taxed unless otherwise agreed.